

Remarks

Applicants have carefully reviewed the Office Action mailed on January 30, 2004. Applicants respectfully traverse all objections, rejections, and assertions made by the Examiner. With this amendment, claims 1, 11, 23, 26, 27, 29, and 30 are amended. Claims 1-8, 10-20, 23-27, 29, and 30-39 remain pending.

Claims 1-8, 10-20, 23-27, 29, and 30-39 are rejected under 35 U.S.C. §102(b) as being anticipated by Epstein et al. in U.S. Patent No. 5,951,589. Each of Applicants' claims include a filter as a required element. The Examiner asserted that Epstein's disclosure that “[t]he membrane 311 can also be made of an impermeable or a permeable material providing multiple uses of the device” renders the membrane equivalent to a filter and, therefore, Epstein anticipates the claimed invention. We disagree.

Epstein discloses repeatedly, in fact eighteen times, that the membrane 311 or related structures are “impermeable” (citations omitted). It is clear that an impermeable structure cannot be a filter. However, the Examiner correctly pointed out that Epstein discloses that the membrane 311 could be made of a permeable material. This disclosure immediately begs one very important question: Permeable to what? Given the fact that the Epstein teaches that the membrane 311 is used as an occlusive device, this question seems particularly relevant.

A number of known devices exist with different types or kinds of permeability. For example, it is common for contact lenses to be gas-permeable. On the other hand, filters are typically permeable to liquids. The quoted statement from Epstein does not specify which type of permeability is contemplated. Given that different types of

permeability exist, the answer to the question “permeable to what?” must be determined from the teachings of Epstein. The referenced text from Epstein does not make this determination clear. From the disclosure of Epstein, however, one thing is clear: the membrane 311 is not permeable to blood or other liquids. In fact, Epstein makes this fact explicitly known at column 19, lines 40-41, which states “[a]s shown, the membrane 311 is substantially impermeable to blood and other liquids.” Because the membrane 311 is impermeable to blood, it cannot act as a blood filter. Because of this distinction, Epstein’s membrane cannot anticipate a filter as claimed.

In order to more clearly define the claimed invention from Epstein on this distinction, Applicants have amended each of the independent claims (i.e., claims 1, 11, 23, 26, 27, 29, and 30) to recite that the filter or filter material, as appropriate, is permeable to blood. Based on the above discussion, Epstein clearly does not anticipate this limitation. Therefore Applicants respectfully submit that these independent claims and all the claims depending therefrom are allowable over Epstein. In light of these amendments and remarks, Applicants hereby request that the rejection under 35 U.S.C. §102(b) be withdrawn.

Application No. 10/044,354
Reply to Office Action dated January 30, 2004

Reexamination and reconsideration are requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is also respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

MARK T. UNGS

By his Attorney

Glenn M. Seager, Reg. No. 36,926
CROMPTON, SEAGER & TUFTE, LLC.
Customer No. 28075
1221 Nicollet Avenue, Suite 800
Minneapolis, Minnesota 55403-2420
Tel: (612) 677-9050